In the Supreme Court of the United States

No. 76-1752

JUDY BERRY AND DONALD A. BERRY,
Petitioners,

vs.

HINDS COUNTY, MISSISSIPPI,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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OPINIONS BELOW

The opinion of the Supreme Court of the State of Mississippi is officially reported in *Berry* v. *Hinds County*, 344 So.2d 146 (Miss. 1977).

OBJECTIONS TO JURISDICTION

This Court does not have jurisdiction of this cause because the petitioners' rights to equal protection and due process under the Constitution of the United States are not violated by the application of the doctrine of sovereign or governmental immunity.

STATUTORY PROVISIONS INVOLVED

The applicability of the Fifth Amendment of the United States Constitution is not in issue in this case because this provision of the Constitution was not cited to or urged by petitioners before either the Circuit Court of the First Judicial District of Hinds County, Mississippi, or the Supreme Court of the State of Mississippi.

STATEMENT OF THE CASE

The Statement of the Case of the petitioners is accepted by the respondent except that respondent would add the following:

The petitioners in the Declaration filed in Circuit Court urged that to deny relief against the County was to deprive the petitioners of rights insured by the Fourteenth Amendment to the United States Constitution. The Fifth Amendment to the United States Constitution is not mentioned in the Declaration. Likewise, in the brief filed by petitioners with the Mississippi Supreme Court the Fourteenth Amendment is mentioned, but no mention is ever made of the Fifth Amendment.

GROUNDS WHY THIS CAUSE SHOULD NOT BE REVIEWED BY THIS COURT

I.

The Doctrine of Sovereign or Governmental Immunity Is Not Violative of the Equal Protection Clause of the United States Constitution.

Contrary to what is urged by the petitioners, the courts of this country have many times been confronted with the argument that the doctrine of sovereign immunity violates the Equal Protection Clause of the Fourteenth Amendment, and each such time the court has rejected the argument. The cases rejecting precisely the argument espoused by the petitioners herein are numerous. The following cases are representative of such cases:

In *Swafford* v. *City of Garland*, 491 S.W.2d 175 (Tex. Civ.App. 1973) Swafford sued the City in tort founded on malicious prosecution. The trial court granted the City's motion for summary judgment based on the doctrine of sovereign immunity. The Texas Court of Civil Appeals affirmed stating:

> We find no merit in his [Swafford's] contention that the application of the doctrine of sovereign immunity in this case is offensive to the equal protection and due process clauses of the State and Federal Constitutions. . . . 491 S.W.2d at 176

In *Sousa* v. *State*, 341 A.2d 282 (N.H. 1975) Sousa and Evans sued for injuries they sustained when the State-owned-and-maintained bridge over which they were driving collapsed. The State filed motions to dismiss on the ground of sovereign immunity. The motions were granted.

On appeal the New Hampshire Supreme Court rejected the plaintiffs' constitutional arguments stating:

> . . . Nor does it constitute a violation of plaintiffs' rights to equal protection as all those who are similarly situated are similarly treated. . . . In short, we hold that there is no constitutional provision which confers on the plaintiffs a right to sue and hold the State liable for a tort. . . . 341 A.2d at 285

In *Hall* v. *Powers,* 6 Pa.Cmwlth. 544, 296 A.2d 535 (1972), aff'd 311 A.2d 612 (Pa. 1973), wherein a complaint in trespass had been filed against the Commonwealth and a Commonwealth employee, the Commonwealth Court of Pennsylvania stated:

> The plaintiff . . . has raised the issue here that Pennsylvania's doctrine of sovereign immunity constitutes a denial of equal protection and due process under the United States Constitution by creating two classes of litigants: those who have a cause of action because injured by a private tortfeasor, and those whose cause of action is barred by sovereign immunity. In Duquesne, supra [Duquesne Light Co. v. Dept. of Transportation, Pa. Cmwlth., 295 A.2d 351 (filed Oct. 2, 1972)], however, this Court specifically rejected that contention. 296 A.2d at 536

The Court sustained the Commonwealth's preliminary objections and dismissed plaintiff's complaint. The Supreme Court of Pennsylvania [311 A.2d 612] affirmed the order of the lower court.

In *Wood* v. *County of Jackson,* 463 S.W.2d 834 (Mo. 1971) the minor plaintiff, passenger in a car that went out of control and overturned on a bridge, sued the County of Jackson asserting that the County had failed to maintain the bridge in a safe condition. The County filed a motion to dismiss raising its sovereign immunity. The trial court sustained the motion. On appeal the plaintiffs asserted:

> ". . . The doctrine of immunity . . . violates Plaintiffs' constitutional rights under the Fourteenth Amendment to the Constitution of the United States . . . in that same discriminates against Plaintiffs by depriving them of their rights and property without due process of law and further denies them equal protection under the law. . . ." 463 S.W.2d at 835

The Missouri Supreme Court rejected the plaintiffs' contention and affirmed the dismissal of the petition stating: "Under the cases in this state all persons are barred from maintaining actions against the state and its political subdivisions by the doctrine of governmental immunity, and this includes counties." 463 S.W.2d at 835

Likewise, *O'Dell* v. *School District of Independence,* 521 S.W.2d 403 (Mo. 1975) was a suit by a student injured during wrestling practice against the School District of Independence, Missouri. Plaintiffs' petition was dismissed by the trial court because of the governmental immunity rule, and the plaintiffs appealed. The Missouri Supreme Court on appeal affirmed. The en banc Court in its majority opinion stated:

> Plaintiffs finally assert that the doctrine of sovereign immunity denies them equal protection of the law and due process . . .
>
> We are of the opinion that plaintiffs' assertion is without merit. Persons who seek recovery for negligence against a private tort-feasor and persons who seek recovery under the "Tort Defense Fund" are different classes of persons from those who seek recovery

> for negligence against the state or its political subdivisions. They are not similarly situated and they may be treated differently. Reed v. Reed, 404 U.S. 71, 92 S.Ct. 251, 30 L.Ed.2d 225 (1971); Krause v. State of Ohio, 31 Ohio St.2d 132, 285 N.E.2d 736 (Ohio 1972). 521 S.W.2d at 409

In *Kriger* v. *South Oakland County Mutual Aid Pact,* 49 Mich.App. 7, 211 N.W.2d 228 (1973) the plaintiff sued the City and others in tort. The City moved for summary judgment contending that the Michigan statute providing that, except as otherwise provided, governmental agencies are immune from tort liability in all cases where the agency is engaged in the exercise of a governmental function shielded it from liability. The plaintiff appealed from the granting of the summary judgment motion asserting that the statute denied him equal protection of the law and that "the statute arbitrarily and unreasonably discriminates by denying relief to victims of public tortfeasors while according relief to victims of private tortfeasors for the same tort." 211 N.W.2d at 230. The Michigan Court rejected the plaintiff's argument stating:

> Courts in other jurisdictions have summarily dismissed similar equal protection claims. [Cases cited]
>
> * * *
>
> The "rational basis" test applies when the law allegedly infringing equal protection creates no fundamental rights. The right claimed by plaintiff clearly falls within that class. If a reasonable relation exists between the classification and some legitimate state interest, no denial of equal protection results. [Cases cited] Withholding legal remedy from persons injured by the state, while granting one to persons injured by nongovernmental tortfeasors does not offend the equal protection clause. 211 N.W.2d at 230-1

The plaintiff in *Kriger, supra,* had relied on the intermediate appellate court decision in *Krause* v. *State,* 28 Ohio App.2d 1, 274 N.E.2d 321 (1971). The Michigan court correctly held that the plaintiff's reliance thereon was misplaced stating that the case contained a questionable construction and application of the traditional equal protection tests and that the case had additionally been reversed by the Ohio Supreme Court in *Krause* v. *State,* 31 Ohio St.2d 132, 285 N.E.2d 736 (1972), appeal dismissed 409 U.S. 1052, 34 L.Ed.2d 506, 93 S.Ct. 557 (1972).

In *Knapp* v. *City of Dearborn,* 60 Mich.App. 18, 230 N.W.2d 293 (1975), a tort action against a city, the plaintiff contended among other things that the Michigan governmental immunity statute was unconstitutional because "its application unreasonably burdens free access to the courts" and "it creates an arbitrary distinction between tortfeasors and injured persons." 230 N.W.2d at 294. The Michigan court rejected the plaintiff's constitutional argument.

Crowder v. *Department of State Parks,* 228 Ga. 436, 185 S.E.2d 908 (1971), cert. denied *sub nom. Crowder* v. *Georgia,* 406 U.S. 914, 32 L.Ed.2d 113, 92 S.Ct. 1768 (1972) was an action on behalf of a minor injured by a fall in a state park. The defendants—the State of Georgia, the Department of State Parks of Georgia, its Director, and the Superintendent of Cloudland Canyon State Park—interposed the defense that the amended complaint failed to state a claim upon which relief could be granted and sovereign immunity. The trial court dismissed the action stating "there is no statute authorizing the suit against the State or its Department of State Parks and for this reason the case is dismissed. . . ." 185 S.E.2d at 910. The Court of Appeals affirmed the trial court. The Supreme Court of Georgia granted the plaintiff's application for certiorari

and in a decision affirming the judgment of the lower court held that the abrogation of the doctrine of sovereign immunity was a matter of public policy for action by the legislature, not the judiciary. As to the equal protection and due process arguments made by the plaintiff, the Georgia Supreme Court stated: "It [the doctrine of sovereign immunity] does not, we unhesitatingly hold, violate either the State or Federal Constitution." 185 S.E.2d at 911. See also *Azizi* v. *Bd. of Regents of the Uni. System of Ga.*, 132 Ga.App. 384, 208 S.E.2d 153 (1974), aff'd 233 Ga. 487, 212 S.E.2d 627 (1975).

Later in *Williams* v. *Georgia Power Company*, 233 Ga. 517, 212 S.E.2d 348 (1975), a death action based on negligence, wherein one of the defendants was Hancock County, the Georgia Supreme Court held that for the reasons given in *Crowder* v. *Department of State Parks, supra*, Code §23-1502 did not violate any provisions of the Federal Constitution. Section 23-1502 provides: "A county is not liable to suit for any cause of action unless made so by statute."

The United States Supreme Court has also held sovereign immunity constitutional. As early as 1858 in *Beers* v. *State of Arkansas*, 20 How. 527, 61 U.S. 527, 15 L.Ed. 991 (1858) the United States Supreme Court stated:

> It is an established principle of jurisprudence in all civilized nations that the sovereign cannot be sued in its own courts, or in any other, without its consent and permission. . . . 15 L.Ed. at 992

In *Palmer* v. *Ohio*, 248 U.S. 32, 63 L.Ed. 108, 39 S.Ct. 16 (1918) the plaintiffs in error had sued Ohio for damages for flooding lands. The Ohio Supreme Court affirmed the action of the lower court dismissing the petition because the state had not consented to be sued. Section 16 of Article 1 of the Ohio Constitution read:

> Suits may be brought against the state, in such courts and in such manner, as may be provided by law.

The Ohio Supreme Court held, as has the Mississippi Supreme Court, that such a section is not self-executing. The plaintiffs in error claimed that the decision deprived them of their property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States. The United States Supreme Court rejected the contention finding that no Federal right was involved and that no Federal question was presented by the record in the case. The Court further stated:

> The rights of individuals to sue a state, in either a Federal or a state court, cannot be derived from the Constitution or laws of the United States. It can only come from the consent of the state. 248 U.S. at 34, 63 L.Ed. at 109

In *Seifert* v. *Standard Paving Company*, 64 Ill.2d 109, 355 N.E.2d 537 (1976) the Illinois Supreme Court, citing the earlier case of *Williams* v. *Medical Center Com.*, 60 Ill. 2d 389, 328 N.E.2d 1, stated:

> ". . . A constitutional grant of immunity to a sovereign government has never, so far as we are aware been held to be an arbitrary classification which violates equal protection." 60 Ill.2d 389, 394-95, 328 N.E.2d 1, 3. 355 N.E.2d at 539

The United States Supreme Court in *Reed* v. *Reed*, 404 U.S. 71, 30 L.Ed.2d 225, 92 S.Ct. 251 (1971), wherein the Equal Protection Clause was under discussion, stated:

> In applying that clause, this Court has consistently recognized that the Fourteenth Amendment does not deny to States the power to treat different classes of persons in different ways. . . . 404 U.S. at 75, 30 L.Ed.2d at 229

In *Tigner* v. *Texas,* 310 U.S. 141, 84 L.Ed. 1124, 60 S.Ct. 879 (1940), the United States Supreme Court also stated:

> . . . The Constitution does not require things which are different in fact or opinion to be treated in law as though they were the same. . . . 310 U.S. at 147, 84 L.Ed. at 1128

In 16 Am.Jur.2d *Constitutional Law* section 533 (1964) the authors state:

> It is a general rule that equal protection of the laws is not denied by a course of procedure which is applied to legal proceedings in which a particular person is affected, if such a course would also be applied to any other person in the state under similar circumstances and conditions.
>
> Equal protection of the laws of a state is extended to persons within its jurisdiction, within the meaning of the Fourteenth Amendment to the Federal Constitution, when its courts are open to them on the same condition as to others in like circumstances, with like rules of evidence and modes of procedure, for the security of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts.

With regard to the application of the doctrine of sovereign immunity in Mississippi, all persons similarly situated are treated similarly. All persons are barred from maintaining suits against the State and its political subdivisions including counties unless there is a specific statute authorizing suit. Furthermore, persons who seek recovery in negligence against private tort-feasors are a different class of persons from those who seek recovery for negligence against the State or its political subdivisions.

They are not similarly situated and may be treated differently. Moreover, a reasonable relationship exists between the classification that has been made and legitimate state interests.

The petitioner herein rely primarily on the decision of the Court of Appeals of Ohio in *Krause* v. *State,* 28 Ohio App.2d 1, 274 N.E.2d 321 (1971), which decision as admitted by petitioners was reversed by the Ohio Supreme Court. The Ohio Supreme Court in *Krause* v. *State,* 31 Ohio St.2d 132, 285 N.E.2d 736 (1972), appeal dismissed *sub nom. Krause* v. *Ohio,* 409 U.S. 1052, 34 L.Ed.2d 506, 93 S.Ct. 557 (1972), reh. denied 410 U.S. 918, 35 L.Ed.2d 280, 93 S.Ct. 959 (1973) held that the provision of the Ohio Constitution which established the doctrine of governmental immunity did not violate the Equal Protection Clause of the Fourteenth Amendment. The Court stated:

> The majority of the court below found the doctrine of governmental immunity violative of the Equal Protection Clause of the Fourteenth Amendment. It bottomed its decision upon a finding that the withholding of a remedy "from persons injured by state torts but not private ones or from some persons but not others injured by government in tortious, but different, phases of its activity" is capricious and represents no rational policy and thus "fatally offends the Constitution."

Section 16 of Article I is not, on its face, discriminatory, for it creates no classification. Without enabling legislation it is an absolute bar to suits against the state. Nor is the withholding of a legal remedy from persons injured by the state, while allowing a remedy for nongovernmental tortious activity, discriminatory governmental action. "The Constitution

does not require things which are different in fact or opinion to be treated in law as though they were the same." Tigner v. Texas (1940), 310 U.S. 141, 147, 60 S.Ct. 879, 882, 84 L.Ed. 1124. "* * * the Fourteenth Amendment does not deny to States the power to treat different classes of persons in different ways." Reed v. Reed (1971), 404 U.S. 71, 75, 92 S.Ct. 251, 253, 30 L.Ed.2d 225, 229. 285 N.E.2d at 744

In *Dairyland Insurance Company* v. *Board of County Commissioners of County of Bernalillo*, 88 N.M. 180, 538 P.2d 1202 (1975) the New Mexico court stated:

> . . . [T]he novel argument that the doctrine of sovereign immunity arbitrarily and unreasonably creates two classes of plaintiffs (one that can be made whole for negligently inflicted injuries and one that cannot) has never been presented to our Supreme Court. . . . They [the plaintiffs] cite only one case in support of their argument—Krause v. State, 28 Ohio App.2d 1, 274 N.E.2d 321 (1971), decided by the Ohio Court of Appeals. This case was later reversed by the Ohio Supreme Court, Krause v. State, 31 Ohio St. 2d 132, 285 N.E.2d 736 (1972), and appeal to the United States Supreme Court was dismissed for want of a substantial federal question. Krause v. Ohio, 409 U.S. 1052, 93 S.Ct. 557, 34 L.Ed.2d 506 (1972). Suffice it to say that we, as the Supreme Court of Ohio, feel that there are substantive differences justifying the special treatment of states and their political subdivisions when carrying on their governmental functions. Krause v. State, supra. 538 P.2d at 1203-4

In *Dairyland Insurance Company* v. *Board of County Commissioners of County of Bernalillo, supra*, motorists had brought suit against the board of county commissioners for personal injuries due to alleged negligence in the maintenance of a county road. The defendants' motion for summary judgment based on the defense of sovereign immunity was granted, and the plaintiffs appealed urging that the doctrine be declared unconstitutional as being in violation of the equal protection clause of the United States Constitution. The New Mexico court rejected the plaintiffs' contention and affirmed the judgment of the lower court.

The other case relied on by the petitioners is *Brown* v. *Wichita State University*, 217 Kan. 661, 538 P.2d 713 (1975), although the petitioners admit that the portion of the decision on which they rely was reversed by the en banc court on motion for rehearing in *Brown* v. *Wichita State University*, 219 Kan. 2, 547 P.2d 1015 (1976), appeal dismissed *sub nom. Bruce* v. *Wichita State University*, 50 L.Ed.2d 67, 97 S.Ct. 41 (1976). On rehearing the Court held that even where the court has abrogated judicially imposed governmental immunity, the legislature has constitutional authority to reimpose it and held K.S.A. 46-901, *et seq.*, did not offend any constitutional provision. In a thorough and well-reasoned decision, the Court specifically rejected the equal protection argument. The Court stated:

> The appellants contend K.S.A. 46-901, et seq., denies equal protection by discriminating between the various levels of governmental tort-feasors by imposing liability based on the unit of government involved. But withholding a legal remedy for persons injured by the state, while allowing a remedy for a non-governmental tortious activity, or a municipal government's tortious activity, is not discriminatory governmental action. (Krause v. State, 31 Ohio St.2d 132, 145, 285 N.E.2d 736 [1972], appeal dismissed for want

of a substantial federal question, 409 U.S. 1052, 93 S.Ct. 557, 34 L.Ed.2d 506, reh. denied, 410 U.S. 918, 93 S.Ct. 969, 35 L.Ed.2d 280; Hutchinson v. Board of Trustees of Univ. of Ala., 288 Ala. 20, 25, 256 So.2d 281 [1971]; and O'Dell v. School District of Independence, 521 So.2d 403, 409 [Mo. 1975].) The constitution does not require things which are different in fact or opinion to be treated in law as though they were the same. (Tigner v. Texas, 310 U.S. 141, 147, 60 S.Ct. 879, 84 L.Ed. 1124, reh. denied, 310 U.S. 659, 60 S.Ct. 1092, 84 L.Ed. 1422.) The Fourteenth Amendment does not deny to states the power to treat different classes of persons in different ways. (Reed v. Reed, 404 U.S. 71, 75, 92 S.Ct. 251, 30 L.Ed.2d 225.)

Many states hold governmental immunity does not violate the equal protection clause of the Fourteenth Amendment. In states which have refused to judicially abrogate common law immunity, equal protection arguments have failed. [Cases cited.] States whose constitution requires legislative action to abrogate governmental immunity have held governmental immunity does not violate the equal protection clause of the Fourteenth Amendment. . . . 547 P.2d at 1025-6

The Kansas Supreme Court on rehearing in *Brown, supra,* further stated: "There are no cases which hold governmental immunity invalid based on the equal protection clause of the Fourteenth Amendment." 547 P.2d at 1029.

The decision of the Kansas Supreme Court on rehearing in the *Brown* case, *supra,* has been followed as controlling in subsequent cases such as *Malone* v. *University of Kansas Medical Center,* 220 Kan. 371, 552 P.2d 885 (1976).

Clearly, as shown above, the doctrine of sovereign or governmental immunity is not violative of the Equal Protection Clause of the United States Constitution.

II.

The Doctrine of Sovereign or Governmental Immunity Is Not Violative of the Due Process Provisions of the United States Constitution.

Many of the cases cited under Point I considered the question of whether or not the doctrine of sovereign immunity is offensive to the due process clauses of the United States Constitution. Each case held such immunity was not violative of due process. *Swafford* v. *City of Garland, supra; Hall* v. *Powers, supra; Wood* v. *County of Jackson, supra; O'Dell* v. *School District of Independence, supra;* and *Crowder* v. *Department of State Parks, supra.* See also *Snow* v. *Freeman,* 55 Mich.App. 84, 222 N.W.2d 43 (1974). The due process question was specifically raised before the United States Supreme Court in *Palmer* v. *Ohio, supra,* which involved sovereign immunity. The United States Supreme Court in *Palmer* v. *Ohio, supra,* specifically held that the case raised no federal question.

In its opinion on the motion for rehearing in *Brown* v. *Wichita State University, supra,* the Kansas Supreme Court addressed itself to the question of whether constitutional due process was violated by K.S.A. 46-901, *et seq.,* the Kansas statute that established governmental immunity. The Court held that K.S.A. 46-901, *et seq.,* violated no provisions of the United States Constitution. The Court stated:

> The court has been cited to no case where constitutional due process has been used as a basis for the abrogation of legislatively imposed governmental immunity. 547 P.2d at 1031

To support their argument on due process the petitioners cite *Boddie* v. *Connecticut*, 401 U.S. 371, 28 L.Ed.2d 113, 91 S.Ct. 780 (1971). In opposition thereto respondent would cite *United States* v. *Kras*, 409 U.S. 434, 34 L.Ed.2d 626, 93 S.Ct. 631 (1973). In *Kras, supra*, the United States Supreme Court held that the provisions of the Bankruptcy Act and the complementary Order in Bankruptcy of the Supreme Court imposing fees and making the payment of those fees a condition precedent to a discharge in bankruptcy were not unconstitutional under the due process provisions of the Fifth Amendment as applied to the indigent Kras. Kras contended that his case fell squarely within *Boddie, supra*. The United States Supreme Court rejected this contention. The Court relied on the statement in *Boddie, supra*, "that the Court went 'no further than necessary to dispose of the case before us' and did 'not decide that access for all individuals to the courts is a right that is, in all circumstances guaranteed by the Due Process Clause of the Fourteenth Amendment so that its exercise may not be placed beyond the reach of any individual.' 401 U.S., at 382-383, 28 L.Ed.2d 113." 409 U.S. at 450, 34 L.Ed.2d at 638. The Court noted the fact that *Boddie, supra*, dealt with the marital relationship and the associational interests that surround that relationship and recognized the fundamental importance of those interests under the United States Constitution. The Court also noted the exclusive control of the state over the marriage relationship. The Court noted that Kras had other remedies to his situation even though the remedies might be unrealistic in a given situation. As in *Kras, supra*, persons injured by state action have other available remedies—i.e., getting a local and private law passed by the Legislature, uninsured motorist insurance, etc. Moreover, we do not in the present case have in issue something of fundamental importance like the marriage relationship.

Therefore, we submit that *Kras, supra*, not *Boddie, supra*, is the case that is properly applicable under the facts of the present case.

The authors in 16 Am.Jur.2d *Constitutional Law* section 544 (1964), in their discussion of due process, state: "The guaranty is inapplicable where there is no interference with life, liberty, or a vested property right." Clearly the sovereign immunity doctrine has not interfered with the life or liberty of the petitioners. Neither has it interfered with any *vested* property right. *Snow* v. *Freeman, supra*.

In addition, respondent questions the applicability of the Fifth Amendment to the United States Constitution to the case at bar since the Fifth Amendment is a limitation upon the power of Congress. Moreover, the Fifth Amendment was never urged before any of the lower courts. As stated by the authors in 5 Am.Jur.2d *Appeal and Error* section 546 (1962) citing numerous cases including a case from the United States Supreme Court:

> Corollary to the rule that errors not raised below will ordinarily not be considered on appeal is the rule that the reviewing court will consider the case only upon the theory upon which it was tried in the court below. . . .

The petitioners never presented any argument under the Fifth Amendment to any of the lower courts and, therefore, may not now assert that provision of the United States Constitution in this Court.

As shown by the foregoing discussion, the doctrine of sovereign or governmental immunity clearly is not violative of the due process provisions of the United States Constitution.

CONCLUSION

In conclusion, the respondent respectfully asks this Court to deny the petitioners' Petition for Writ of Certiorari because as set out above the sovereign immunity doctrine violates no federal constitutional right of the petitioners. The doctrine is not violative of the Equal Protection Clause or the Due Process Clause of the United States Constitution. No federal right or question is presented by the record in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that all parties required to be served with copies of the Respondent's Brief in Opposition to Petition for Writ of Certiorari have been served in that on this the 6th day of July, 1977, three copies of said Brief were mailed, air mail postage prepaid, to Pat H. Scanlon, Esquire, 1440 Deposit Guaranty Plaza, Jackson, Mississippi 39201, attorney of record for petitioners.

THOMAS H. WATKINS
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